



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 22, 1994

Ms. Karen Hendershot Bailey  
Assistant City Attorney  
Legal Department  
City of Victoria  
P.O. Box 1758  
Victoria, Texas 77902-1758

OR94-573

Dear Ms. Bailey:

The City of Victoria (the "city") received a request under the Texas Open Records Act, Government Code chapter 552, for information about a certain ruptured water main. You asserted that section 552.103 of the Government Code excepted the information from required public disclosure. Citing Government Code section 552.302 and *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ), this office concluded in Open Records Letter No. 94-294 (1994) that the city had failed to request a ruling within the proper statutory period, *see* Gov't Code § 552.301(a) (requiring governmental body to request decision within ten days of receipt of request), and therefore could not withhold the requested information under section 552.103(a). You now request reconsideration of Open Records Letter No. 94-294. We have assigned your request for reconsideration ID# 27439.

We relied in Open Records Letter No. 94-294 on our understanding that the requestor had submitted his request for information to the city on January 17, 1994, and that the city's request for a ruling was made no earlier than January 31, 1994. You have submitted to us for review new evidence that demonstrates that the city in fact requested a decision of this office on January 28, 1994. In addition, you explain that the city received the request on January 18, 1994, not January 17. You account for this discrepancy as follows:

As you can see from the request itself, it was received by the City Secretary's office on January 17, 1994, not on January 27, 1994. In order to set the record completely straight, let me state that Mr. Leonard has made numerous Requests for Information from the City

of Victoria. He was well aware that the City Secretary was not the custodian of the records he requested. The City Secretary pointed this out to him and asked whether he would like to take the completed Request to the correct department, the Water/Wastewater Department, which is located in a building more than 2 miles away from City Hall, or whether he would like her to send the Request to the correct department via interoffice mail. She informed him that it would take at least an extra day to reach them via interoffice mail. Mr. Leonard stated that he wanted her to forward the Request to the Water/Wastewater department and further agreed the City could begin to calculate its ten (10) day period, for purposes of responding to the Request, from the Request's arrival at the correct department, which as stamped on the Request was the next day, January 18, 1994.

Accordingly, you calculate the ten days required under section 552.301(a) from January 18, 1994. By this reckoning, the city made its request for an open records determination within ten days of receipt of the request for information.

We note, however, that it was incorrect for the city to calculate the ten days from the date the city's Water/Wastewater Department received the request. The request was made to the City of Victoria and was hand-delivered to the city secretary. The city, through its Water/Wastewater Department, is undisputedly the custodian of the requested information, because the Water/Wastewater Department acts as the city's agent in holding the requested information. Moreover, while physical custody of the requested information may lie with the Water/Wastewater Department, ultimate responsibility for the release or nondisclosure of the requested information remains with the city. The city cannot simply postpone its duties under section 552.301(a) of the Government Code by delegating them to an agent. Cf. Open Records Decision No. 576 (1990). We conclude, therefore, that, for purposes of calculating deadlines within the Open Records Act, an open records request for information held by the city's Water/Wastewater Department is considered to be received when the city secretary receives it. Accordingly, the city received the request January 17, 1994. It requested a decision of this office January 28, 1994. On the basis of these facts, we conclude that the city failed to request a decision of this office within the ten days mandated by section 552.301(a) of the Government Code.<sup>1</sup>

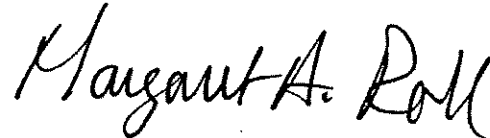
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<sup>1</sup>We note that there is some question as to whether the requestor waived any rights under the Open Records Act by agreeing that the city could begin to calculate its ten day period, for purposes of responding to his request, from the request's arrival at the Water/Wastewater Department. It appears, however, that the city misinformed the requestor as to the city's duties under section 552.301(a) of the Government Code by implying that it was under no obligation to respond to the request unless the request were filed with the Water/Wastewater Department. We assume that the requestor believed at the time that the city's interpretation of the Open Records Act was correct. Therefore, because the requestor appears to have had no knowledge that he was waiving any right under the Open Records Act, nothing was waived. See *Fortner v. Johnson*, 404 S.W.2d 892 (Tex. Civ. App.—Fort Worth 1966, writ ref'd n.r.e.) (waiver is intentional relinquishment of known legal right available at time); *Stowers v. Harper*, 376 S.W.2d 34 (Tex.

Our conclusion in Open Records Letter No. 94-294 therefore stands. The city must release the requested information in its entirety.

If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll  
Assistant Attorney General  
Open Government Section

MAR/GCK/rho

Ref.: ID# 27439

cc: Mr. C. W. Leonard  
Investigator  
Law Offices of Hartman, Lapham & Smith, L.L.P  
P.O. Drawer D  
Victoria, Texas 77901

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(Footnote continued)

Civ. App.--Tyler 1964, writ ref'd n.r.e) (essential prerequisite to relinquishment of right is knowledge of existence of such right on part of person who is alleged to have made waiver); 73 TEX. JUR. 3d *Waiver* §§ 1-6 (1990).